IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

W.T. DAVIS, ET AL. PLAINTIFFS

VS. NO. 89-6088

HOT SPRINGS SCHOOL DISTRICT, ET AL. DEFENDANTS

MEMORANDUM OF THE PARTIES IN SUPPORT OF THE COMPREHENSIVE GARLAND COUNTY SCHOOL DESEGREGATION SETTLEMENT

Introduction

> The law strongly favors settlements. Courts should hospitably receive them.
> . . . .
> A strong public policy favors agreements, and courts should approach them with a presumption in their favor.

Little Rock School District v. Pulaski County Special School District, et al., 921 F.2d. 1371 at 1383, 1388 (8th Cir. 1990)

Background and Procedural History

This action was filed on August 18, 1989. The complaint alleged various economic and student population differences between and among the public school systems operating in Garland County, Arkansas, and historic allegations concerning the State. Included as defendants are the Garland County Board of Education and the Arkansas State Board of Education. Various forms and levels of equitable and financial relief were sought.

The parties engaged in sufficient discovery to enable them to assess the strengths and weaknesses of the claims presented

by the plaintiff class. However, most of their energies have been focused, appropriately we think, toward settlement, rather than litigation, of this case. The parties have been especially mindful that bitter and protracted litigation, particularly involving multiple parties and multiple issues, can drain scarce public resources better directed toward the shared goal of all of the parties to this case: improvement in education in Garland County.

The Settlement Agreement

Although liability, if any, has not been litigated in this case, the parties have nevertheless agreed to a comprehensive settlement agreement which provides significant relief for the plaintiff class. Of particular significance is the agreement by all of the defendant school districts to implement the School Choice Act of 1989, an otherwise voluntary program to which the defendants now bind themselves. This Act states that:

> The General Assembly hereby finds that the students in Arkansas' public schools and their parents will become more informed about and involved in the public educational system if students and their parents or guardians are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no "right" school for every student and permitting students to choose from among different schools with differing assets will increase the likelihood that some marginal students stay in school and that other, more motivated students find their full academic potential.

The implementation of this Act on a county wide basis will facilitate the voluntary movement of minority students from the

Hot Springs School District to any other district in the county and will, in turn, permit the transfer of any majority students from any other Garland County District to the Hot Springs School District.

Also of import is the agreement of all of the school districts to form the Garland County Education Consortium. The Consortium will convene at least twice a year to examine issues related to the racial composition of each of the districts in Garland County, to discuss issues related to consolidation and to pursue financial matters such as joint purchasing and program sharing designed to reduce the cost of education in this county. That body shall also act as the appropriate forum to discuss the hiring of minority personnel. The Arkansas Department of Education will determine the relevant labor market available for such positions.

As part of this comprehensive agreement, the State of Arkansas agrees to provide significant assistance to these districts in the areas of staff development, with emphasis upon teacher training, civil rights and race relations training and multicultural counseling strategies.

The State has also agreed to provide curriculum development and support particularly in the areas of multicultural education, textbook and instructional material selection and the development of self-esteem curriculum.

Because all of the parties agree that reduction in learning disparity between the races is an important goal, the

State also is binding itself to provide particularized training in this area.

The State has further agreed to assist the districts to develop programs and procedures designed to address the over-representation of minority students in special education and the under-representation of minority students in gifted and talented education.

The parties also recognize that the individual achievement of students is greatly influenced by the day to day relationship between student and teacher. To enhance these relationships, the State has also agreed to provide particularly described programs designed to improve these relationships.

The State has also agreed to provide grants assistance and is obligating itself to conduct equity monitoring for desegregation. To promote positive equity outcomes, each school district is obligating itself to appoint to its equity committee one member of the Garland County Chapter of the NAACP.

Finally, the comprehensive settlement agreement contains express provisions regarding the payment of attorneys' fees, release and dismissal of the parties to the litigation, class certification and an agreement that there shall be no further litigation in this case except to the extent necessary to enforce the terms of the settlement agreement.

The Agreement has been executed by all of the parties who stand ready to execute the releases upon approval of this Agreement.

The Law

The United States Court of Appeals for the Eighth Circuit has articulated the standard to be used in assessing and evaluating the proposed settlement agreement.

> A strong public policy favors agreements, and courts should approach them with a presumption in their favor. As the Seventh Circuit said in Armstrong, supra:
>
> > Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public.

LRSD v. PCSSD, supra at 1388.

The parties have summarized the basic components of the Settlement Agreement. It is an agreement borne of negotiations in which the certified class was represented by counsel who also represented the Garland County Chapter of the NAACP. It is an agreement in which the interests of the State were represented and negotiated by counsel and the Arkansas State Board of Education. It is an agreement in which the seven defendant school districts in Garland County were represented by counsel and their respective boards and superintendents. Accordingly, all of those with a direct stake in the outcome of this case have been represented in the negotiations and have agreed to the terms of the Settlement Agreement. The public has been represented in a representative capacity by all of the foregoing described entities including the multiple elected boards of education which are parties to this litigation.

It is important to note that the published notice of this settlement has drawn but a single response.[1] Paragraph 1 of the March 13, 1992 filing (hereinafter "the March filing") questions the composition of the Garland County Education Corsortium. Matters such as these, however, it is respectfully submitted, are subject to the same standard articulated by the Court of Appeals to guide courts in assessing settlements, to wit:

> [J]udges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel . . . Settlement agreements carry with them a presumption of acceptability, . . .

LRSD v. PCSSD, Id., at 1385.

The parties believe the same standard should apply to observations such as those described in the first paragraph of the March filing and that these observations should be disregarded.

Paragraph 2 of the March filing, the parties submit, at most amounts to an uninformed lament concerning this litigation

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[1]The response was filed on March 13, 1992. It bears no heading and is not readily describable as an objection, at least in the view of the parties. Significantly, nowhere does it contain a prayer or suggestion that the Settlement Agreement should not be approved. However, since it was apparently filed in response to the opportunity to present objections to the settlement agreement, the parties will discuss it briefly.

and it does not rise to the level of an objection to approval of the Settlement.[2]

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[2]Early in this case, after the parties completed their preliminary assessments of the legal issues, they determined that the issue of local autonomy, important to any serious discussion of consolidation, could not be seriously questioned in this case. As the Court of Appeals has made clear in this circuit:

> [T]he notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. * * * Local autonomy has long been thought essential both to the maintenance of community concern in support for public schools and to the quality of the educational process. Milliken I, 418 U.S. at 741-42, 94 S.Ct. at 3125-26.

LRSD v. PCSSD, et al., 778 F.2d 404, 434 (8th Cir. 1985)

In his concurring opinion in the Pulaski County desegregation case, now Chief Judge Richard Arnold noted:

> Consolidation would mean destruction of three popularly governed units of local government, and substitution in their stead of one judicially created and judicially supervised school district.
>
> * * *
>
> Consolidation is a drastic step that should be reserved for clearer cases.

Id., at 436, 437.

Further, as previously noted, the Arkansas General Assembly has now effectively swept away legal barriers to the free movement of students across district lines for desegregation purposes. The option of School Choice did not exist during the liability phase of the Pulaski County case but its existence has influenced the parties in agreeing upon their settlement in this case.

Paragraph 3 basically poses a series of questions easily answered by the express terms of the Settlement Agreement. At page 15 of the Agreement, the court can see that:

> The Davis plaintiffs release the districts and the State of all liability for issues which have been raised in this litigation and commit that there will be no further litigation among or between plaintiffs, the State and any of the districts, other than proceedings to enforce the terms of this Settlement as finally approved by the court.

One reason, of course, that class actions demand notice and an opportunity for objections to be heard is so that the familiar principles of res judicata, collateral estopple and estopple by judgment can be invoked to preclude any effort by others to relitigate issues which are disposed of by this case. Clearly, if any one or more of the parties fail to carry out the promises they have made herein, the jurisdiction of this court may be invoked again to "enforce the terms of this Settlement as finally approved by the court." (Agreement at 15)

Paragraph 4, it is respectfully submitted, is simply a reincarnation of the kind of attorney criticism that prompted the Court of Appeals to recently state that:

> Lawyer bashing is popular in some quarters, and some lawyers deserve criticism, but the efforts of counsel in this case are worthy of substantial recognition.

LRSD v. PCSSD, at 1392.

As the court will see from the proof placed before it at the fairness hearing, this case, despite the presence of multiple parties and, necessarily, multiple counsel, has

actually cost the school districts very little money. Indeed, a guiding principle utilized by the parties and their counsel from the outset of this litigation was to manage it in a way and toward an end, which we believe we have achieved, that would produce the best results for the least expenditure of money.

While the March filing does not specifically challenge the only fee the settlement agreement provides, that being $30,000 to be paid to counsel for the class, nevertheless the parties do understand that:

> Courts, however, have broad inherent supervisory powers over attorneys practicing before them. They may inquire into the fees charged by lawyers and regulate or curtail them if necessary to protect clients from imposition or to prevent otherwise unconscienable behavior. (Citation omitted) This is especially true in class actions and cases involving plaintiffs who are minors.

LRSD v. PCSSD, Id., at 1391.

In focusing only upon the fee provided by the Settlement Agreement, all of the parties agreed the fee is reasonable under all of the circumstances of this case. Because of its relative modesty, (compare LRSD v. PCSSD, Id., at 1390-1393) the parties perceive no particular reason to extend this memorandum regarding the fee. They do wish to observe, however, that the March filing's estimate of total fees approximating almost one-half million dollars is absolutely and totally wrong. As the proof will show, the net fees paid directly by all of the districts in this case are modest.

Conclusion

The parties have assessed the relative merits of this action and submit that they have entered into a settlement agreement tailored to their informed view of this case. They respectfully suggest and request that particularly given the lack of substantive objection to its terms and conditions, that this court should approve it.

Respectfully submitted,

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